

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7193 PCB JUVJ 06-03 Juvenile Sexual Offenders

SPONSOR(S): Juvenile Justice Committee

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Juvenile Justice Committee	6 Y, 0 N	White	White
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SUMMARY ANALYSIS

The bill implements selected recommendations made by the Task Force on Juvenile Sexual Offenders and their Victims (Task Force) in its January 2006 final report to the Governor and Legislature. Specifically, the bill:

- Requires courts to order, and consider the results and recommendations of, psychosexual evaluations of all juvenile sexual offenders; whereas, current law only provides courts with the discretion, subject to appropriation, to order such evaluations.
- Specifies more comprehensive requirements for psychosexual evaluations than those provided in current law; e.g., under the bill, the evaluation must address the juvenile's substance abuse and mental health history and include an intellectual, personality, and trauma assessment.
- Requires that psychosexual evaluations be conducted by statutorily certified juvenile sexual offender therapists; whereas, current law specifies only that such evaluations may be conducted by psychologists, therapists, or psychiatrists.
- Recreates the Task Force so that it may continue its review of the state's juvenile sexual offender laws and submit a second report that: discusses each state law addressing juvenile sexual offenders; specifically identifies statutory criteria that should be satisfied before juvenile sexual offender classification and placement; and sets forth a comprehensive plan for implementation of its recommendations.

The bill's estimated fiscal impact is \$566,822 (\$530,700 for the cost of mandatory psychosexual evaluations and \$36,122 for Task Force expenses).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill creates a task force, the membership of which is to be appointed by the Secretary of the Department of Juvenile Justice (DJJ), and assigns the task force duties to review specified issues and to submit a report to the Governor and Legislature.

B. EFFECT OF PROPOSED CHANGES:

Juvenile Sexual Offenders: Currently, s. 985.03(32), F.S., defines a juvenile sexual offender as a juvenile who has been found to have committed:

- A violation of:
 - Chapter 794, F.S., proscribing sexual battery.
 - Chapter 796, F.S., proscribing prostitution.
 - Chapter 800, F.S., proscribing lewdness and indecent exposure.
 - Section 827.071, F.S., proscribing sexual performance by a child.
 - Section 847.0133, F.S., proscribing the provision of obscenity to minors.
- Any felony violation of law or delinquent act involving juvenile sexual abuse, which means any sexual behavior¹ that occurs without consent, without equality, or as a result of coercion.

After an adjudicatory hearing for a juvenile sexual offender, the court may either: (1) treat the offender as it would any other juvenile found to have committed a delinquent act, i.e., withhold adjudication and place the offender on probation or adjudicate the offender and impose probation or commitment;² or (2) treat the offender as a juvenile sexual offender. Under the second option, the court, subject to specific appropriation, may:

- Order an examination of the juvenile sexual offender by a psychologist, therapist, or psychiatrist, if the offender has no recent history of a comprehensive assessment focused on sexually deviant behavior.³ The report of this exam must include: (a) the offender's account of the incident and the official report of the investigation; (b) the offender's offense history; (c) a multidisciplinary assessment of the offender's sexually deviant behaviors by a psychologist, therapist, or psychiatrist; (d) an assessment of the offender's family, social, educational, and employment situation; and (e) an assessment of the offender's amenability to treatment and relative risk to the victim and community.⁴
- Impose a juvenile sexual offender community-based treatment alternative disposition. In order to utilize this alternative disposition, the court must first consider: (a) a proposed plan of the community-based treatment from the DJJ; (b) whether the offender and community will benefit from imposition of community-based treatment; and (c) the victim's or victim's family's opinion of whether the offender should receive community-based treatment. Upon finding that a community-based alternative disposition is appropriate, the court may place the offender on community supervision for up to three years and impose conditions that require the offender to: (a) undergo outpatient juvenile sexual offender treatment; (b) remain within prescribed geographical boundaries; and (c)

¹ The subsection further states that, "Juvenile sexual offender behavior ranges from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts." Section 985.03(32), F.S.

² Sections 985.228 and 985.231, F.S.

³ Section 985.231(3), F.S.

⁴ Section 985.231(3)(a) and (b), F.S.

comply with all requirements of the treatment plan. If the offender violates any condition or if the court finds that the juvenile is failing to make satisfactory progress in treatment, the court may revoke the community-based treatment alternative and commit the offender to the DJJ.⁵

- Commit the juvenile sexual offender to the DJJ for placement in a juvenile sexual offender commitment program under s. 985.308, F.S. This section authorizes the DJJ, subject to appropriation, to operate or contract for juvenile sexual offender commitment programs, which must include educational components, life management training, substance abuse treatment, and intensive psychological treatment.

2005 Task Force on Juvenile Sexual Offenders and their Victims: During the 2005 Regular Session, the Legislature enacted ch. 2005-263, L.O.F., which created the Task Force on Juvenile Sexual Offenders and their Victims (Task Force). The law directed the Governor to appoint up to 12 members to the Task Force, who were to include, but were not limited to: a circuit court judge with at least 1 year's experience in the juvenile division, a state attorney with at least 1 year's experience in the juvenile division, a public defender with at least 1 year's experience in the juvenile division, one representative of the Department of Juvenile Justice, two representatives of providers of juvenile sexual offender services, one member of the Florida Juvenile Justice Association, one member of the Florida Association for the Treatment of Sexual Abusers, and one victim of a juvenile sexual offense. The Governor made appointments satisfying these requirements, except that the Task Force was unsuccessful in finding a member who was a victim of a juvenile sexual offense.⁶

The law also directed the Task Force to make:

- Findings that included, but were not limited to: identification of statutes that address juvenile sexual offenders; a profile of the acts committed by each juvenile placed in juvenile sexual offender programming in this state between July 2000 and June 2005 and an assessment of the appropriateness of those placements based upon the acts committed; identification of community-based and residential commitment programming available for juvenile sexual offenders and an assessment of such programming's effectiveness; and identification of qualifications required for staff who serve juvenile sexual offenders.
- Recommendations that included, but were not limited to: suggestions for the improvement of the state's laws, policies, programs, and funding for juvenile sexual offenders; and identification of criteria that should be satisfied prior to placement of a juvenile in juvenile sexual offender programming.

The Task Force held five meetings and a series of conference calls in 2005 to execute its duties, and it issued a final report of its findings and recommendations on January 18, 2006. This report contained 18 findings with numerous related recommendations in the areas of: (1) Response to Victims; (2) Prevention and Awareness; (3) Evaluation and Assessment; (4) Treatment and Supervision; (5) Legal Issues; and (6) Interagency Collaboration.⁷

The Task Force report identified its priority recommendations as:

- The Legislature should:
 - Reinstate the \$2.4 million that was cut from the community-based sexual offender treatment budget in 2000, in order to make such treatment available in each judicial circuit.
 - Fund a Sexual Abuse Intervention Network in each judicial circuit at an annual cost of \$100,000 per circuit.

⁵ Section 985.231(3), F.S.

⁶ *Juvenile Sexual Offenders and Their Victims: Final Report*, Task Force on Juvenile Sexual Offenders and their Victims, January 18, 2006, p. 5.

⁷ *Id.* at 19-38.

- Require and fund comprehensive psychosexual evaluations by qualified sexual offender practitioners for all juvenile sexual offenders.
 - Amend ch. 985, F.S., to change the term “Juvenile Sexual Offender” to “Juveniles with Sexual Behavioral Problems.”
 - Fund long-term counseling services for sexual abuse victims under 18 years of age.
- The DJJ should only contract with qualified sexual offender practitioners for the conduct of psychosexual evaluations.
 - The Secretary of the DJJ should appoint a workgroup to study and make recommendations regarding the reallocation of juvenile sexual offender treatment resources from high-risk residential programs to lower risk residential or community-based programs.⁸

Additionally, Task Force representatives indicated during the presentation on its report at the House Juvenile Justice Committee meeting on February 8, 2006, that the Task Force should be recreated in 2006, as it did not have sufficient time in 2005 to thoroughly complete the duties required by ch. 2005-263, L.O.F. For example, the Task Force was unable to identify and review all laws applicable to juvenile sexual offenders and to make detailed findings and recommendations regarding the criteria that should be satisfied prior to placement in juvenile sexual offender programming.

Effect of bill: The bill implements selected recommendations made by the Task Force by amending:

- *Section 985.03, F.S., to define the terms:*
 - *“Psychosexual evaluation,” to mean an evaluation by a qualified sexual offender practitioner, which addresses, at a minimum, a juvenile sexual offender’s: (a) account of the incident and the official report of the investigation; (b) sexual development and sexual delinquency history and treatment; (c) behavioral and delinquency history; (d) substance abuse and mental health history and treatment; (e) intellectual, personality, and trauma assessment; (f) physiological assessment if appropriate; (g) family, social, educational, and employment situation; (h) risk for committing a future act of sexual delinquency or physical harm to himself, herself, the victim, or other persons; (i) culpability assessment; (j) diagnosis; and (k) amenability to treatment, including treatment recommendations specific to his or her needs.*
 - *“Qualified Sexual Offender Practitioner” to mean a professional who is eligible to practice juvenile sexual offender therapy under s. 490.0145 or s. 491.0144,⁹ and who: (a) possesses at least 55 hours of post-graduate degree continuing education courses in specified areas¹⁰ and at least 2000 hours of post-graduate degree supervised practice in the evaluation and treatment of persons who have committed sexually delinquent acts; or (b) is directly supervised by a juvenile sexual offender therapist who satisfies the aforementioned education and practice requirements.*

⁸ *Id.* at 3.

⁹ Under ss. 490.0145 and 490.0144, F.S., only a person who is licensed as a psychologist, clinical social worker, marriage and family therapist, or mental health counselor and who possesses education and training requirements specified in rule may practice juvenile sex offender therapy. See Rule 64B19-18.0025 (requiring the following for psychologists: coursework or training in child behavior and development, child psychopathology, and child assessment and treatment and 30 hours training in juvenile sex offender assessment and treatment); and Rule 64B4-7.007 (requiring the following for clinical social workers, marriage and family therapists, or mental health counselors: education and training in child development and psychopathology, developmental sexuality, interaction between sexuality, sexual arousal patterns, sexual dysfunctions, disorders, and deviancy, victim empathy, use/misuse of defense mechanisms, compulsivity management, social resilience, group therapy, and legal, ethical, and forensic issues in juvenile sexual offender treatment, and 20 hours of continuing education every two years in the aforementioned subjects).

¹⁰ The areas of continuing education specified by the bill are: DSM-IV diagnoses related to sexual offenders; etiology of sexual deviance; science-based sexually delinquent evaluation and risk assessment and treatment techniques; use of plethysmographs, visual reaction time, and polygraphs in the evaluation, treatment, and monitoring of juveniles who have committed sexually delinquent acts; evaluation and treatment of special populations; and legal and ethical issues in the evaluation and treatment of juveniles who have committed sexually delinquent acts.

- Sections 985.229 and 985.23(2), F.S., to require the court to order the DJJ to conduct or arrange for a psychosexual evaluation of a juvenile sexual offender; whereas, under current law, a court is authorized, subject to appropriation, rather than required, to order juvenile sexual offender evaluations. Further, the bill specifies that the results and recommendations of the psychosexual evaluation are to be provided to the court: (a) in the offender's predisposition report (PDR), if a PDR is completed; or (b) in writing at least 48 hours prior to the disposition hearing, if a PDR is not completed.
- Section 985.231(3), F.S.,¹¹ to: (a) require a court to consider a juvenile sexual offender's psychosexual evaluation prior to imposition of a community-based juvenile sexual offender treatment program; and (b) repeal current law's description of a comprehensive assessment focused on sexual deviancy, given the more comprehensive definition of "psychosexual evaluation" added by the bill to the chapter's definition section.

The bill also recreates the Task Force on Juvenile Sexual Offenders and their Victims for the period of August 1, 2006 until January 1, 2007, in order to permit it to continue its review of the state's juvenile sexual offender laws. The bill requires the 2006 Task Force to consist of the same membership required for the 2005 Task Force, as described above, except that one member must be a victim advocate, rather than a victim of a juvenile sexual offender. The 2005 Task Force report noted that it made efforts to locate such a victim member, but was unsuccessful.¹²

The bill requires the 2006 Task Force to:

- Review the findings and recommendations contained in the reports of the 1995 Task Force on Juvenile Sex Offenders and Victims of Juvenile Sexual Abuse and Crimes and of the 2005 Task Force¹³ and to identify each recommendation that has not yet been implemented.
- Determine which recommendations remain appropriate for implementation and make additional recommendations, if warranted, for the improvement of the state's laws, policies, programs, and funding for juvenile sexual offenders.
- Submit a report to the Governor and Legislature by January 1, 2007, that: discusses each state law addressing juvenile sexual offenders; specifically identifies statutory criteria that should be satisfied before a juvenile is classified as a sexual offender or placed in sexual offender programming; and sets forth a comprehensive plan for implementation of the Task Force's recommendations, including proposed amendments to statute to redefine the term "juvenile sexual offender" and modifications of state agency practices and procedures.

Further, the bill requires the DJJ to provide administrative support for the 2006 Task Force and states that Task Force members shall be entitled to reimbursement for travel and per diem expenses under s. 112.061, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 985.03, F.S., to create definitions for the terms, "psychosexual evaluation" and "qualified sexual offender therapist."

Section 2. Amends s. 985.229, F.S., to create a new subsection (4) that requires a court to order a psychosexual evaluation for a juvenile sexual offender.

¹¹ The bill also makes technical changes to s. 985.231(3), F.S., so that: (a) the terms, "community-based juvenile sexual offender treatment program" and "offender" are consistently used; and (b) the obsolete term "community supervision" is replaced by the current term "probation."

¹² *Juvenile Sexual Offenders and Their Victims: Final Report* at p. 5.

¹³ The 2005 Task Force report set forth the recommendations of the 1995 Task Force in Appendix II. *Id.* at 43-48.

Section 3. Amends s. 985.23(2)(i), F.S., to require that a juvenile sexual offender's PDR contain an evaluation of the results and recommendations of a psychosexual evaluation.

Section 4. Amends s. 985.231(2), F.S., to conform a cross-reference, and s. 985.231(3), F.S., to require court consideration of a psychosexual evaluation prior to imposition of a community-based juvenile sexual offender treatment program, repeal current law's description of a comprehensive assessment focused on sexual deviancy, and make technical changes.

Section 5. Amends s. 985.31(3) and (4), F.S., to conform cross-references.

Section 6. Amends s. 985.3141(2), F.S., to conform a cross-reference.

Section 7. Creates the Task Force on Juvenile Sexual Offenders and their Victims; specifies membership; specifies duties; requires a report; requires the DJJ to provide administrative support; authorizes reimbursement for travel and per diem expenses; and provides for dissolution.

Section 8. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None apparent.

2. Expenditures:

The bill requires psychosexual evaluations for juvenile sexual offenders. According to data set forth in the Task Force's report, the estimated fiscal impact for the psychosexual evaluations is \$530,700. This figure is based upon a cost of \$1200 per evaluation multiplied by 696 (the number of youth found to have committed felony and misdemeanor sexual delinquency crimes in Fiscal Year 2004-2005) less \$304,500 (the amount that the DJJ had available for juvenile sexual offender evaluations in Fiscal Year 2004-2005).

The bill authorizes members of the Task Force on Juvenile Sexual Offenders and their Victims to receive reimbursement from the DJJ for travel and per diem expenses. Based upon the DJJ's experience in administering the 2005 Task Force on Juvenile Sexual Offenders and their Victims, the DJJ estimates the following fiscal impacts for the Task Force created by this bill:

- \$9,482 to hire a part-time OPS professional staff person to perform administrative, research, and writing duties for the Task Force. This figure is based upon the Task Force's 22-week duration, 20 hours per week, an hourly salary of \$20.00, and 7.75% for F.I.C.A.
- Up to \$26,640 for travel and per diem reimbursement. The DJJ anticipates that five meetings will be required for the Task Force. Further, the DJJ estimates that up to eight members of the Task Force may be from outside of the Tallahassee area. These members would be entitled to travel and per diem reimbursement under the bill. According to the DJJ, such reimbursement may average as much as \$666.00 per member per meeting.

Thus, the total potential fiscal impact of this bill is \$566,822.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None apparent.

2. Expenditures:
None apparent.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
None apparent.

D. FISCAL COMMENTS:
None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:
None.

B. RULE-MAKING AUTHORITY:
None.

C. DRAFTING ISSUES OR OTHER COMMENTS:
None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES